



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH
IN THE MATTER OF**

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee:	C.P. White Holdings Ltd. dba Boutique Lounge 1318 Broad Street Victoria, BC V8W 2A9
Case:	EH10-141
For the Licensee:	Greg Harney
For the Branch:	Olubode Fagbamiye
General Manager's Delegate:	Sheldon M. Seigel
Place of Hearing:	October 12 & November 29, 2011
Date of Decision:	January 12, 2012

**Ministry of Public
Safety & Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The Licensee operates a nightclub in Victoria with Liquor Primary Licence number 113949. The hours indicated for liquor service are 7:00 p.m. to 2:00 a.m. seven days per week. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication "*Guide for Liquor Licensees in British Columbia*" ("*Guide*").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Branch's allegation and proposed penalty are set out in the Notice of Enforcement Action (NOEA) dated January 12, 2011. The Branch alleges that in the night of October 31, 2010 the Licensee contravened section 6(4) of the *Liquor Control & Licensing Regulation (Regulation)* by permitting more persons in the licensed establishment than the person capacity set by the General Manager, and the number of persons in the licensed establishment exceeded the occupant load.

The proposed penalty is a seven-day licence suspension in accordance with Schedule 4 of the *Regulation*. Item 15 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type: a licence suspension of four to seven days and/or a monetary penalty of \$5,000.00 - \$7,000.00.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*****Capacity**

6 (1) Before the general manager

- (a) approves the issuance of a licence,
- (b) approves a structural alteration of or a change to the size of any area of a licensed establishment,
- (c) approves a transfer of a licence under section 21 (3) of the Act, or
- (d) approves an application for an increase in the person capacity of a licensed establishment,

the general manager must set the person capacity of the establishment, having regard to the public interest and the views of a local government or first nation if provided under section 10 or 53 of this regulation.

(2) Once the general manager has set the person capacity of an establishment in accordance with subsection (1), the general manager must refuse to issue, amend or transfer a licence for that establishment if the occupant load of the establishment is not equal to the person capacity.

(3) Despite subsection (2), if the occupant load of an establishment is less than the person capacity of the establishment set under subsection (1), the general manager may issue, amend or transfer the licence for that establishment after reducing the person capacity to equal the occupant load.

(4) It is a term and condition of a licence that there must not be, in the licensed establishment at any one time, more persons than the person capacity set under subsection (1) or (3).

(5) This section does not apply to a U-Brew, U-Vin, licensee retail store, distillery, brewery or a winery without a winery lounge endorsement.

ISSUES

1. Did the contravention occur?
2. In the event that the contravention is found to have occurred, can the Licensee establish a defence of due diligence?
3. If the contravention is proven, is a penalty appropriate and what is a reasonable penalty?

EXHIBITS

- EXHIBIT No. 1: Branch Book of Documents
- EXHIBIT No. 2: Floor plan alteration (Licensee)
- EXHIBIT No. 3: Daytimer Oct 30, 2010 and Oct 31, 2010 (Licensee)
- EXHIBIT No. 4: Notes (Oct 31, 2010) of Head of Security (Licensee)

EVIDENCEInspector 1

The inspector testified that the establishment has a person capacity of 292 and an occupant load of 292 and that the official floor plan is at Exhibit No. 1, tab 4. The inspector pointed to the signature under the indicated occupant load and indicated that signature established the plan as official.

The inspector said he has counted more than a hundred liquor establishments for compliance with capacity. He indicated that on October 31, 2010, he attended the establishment because his partner received a call at 23:35 hours from the late night task force of the Victoria Police Department. He said he understood that the police advised Inspector 2 that the establishment might have been overcrowded.

Inspector 1 arrived at the Boutique Lounge at 23:41 hours with Inspector 2. He observed a doorman and some smokers outside. He and Inspector 2 each checked their respective mechanical counters for correct operation and zeroed them out before entering through the main doors. He could not recall if the door staff had counters but that "normally they do."

He described his counts generally as follows:

He began his count on walking up the staircase. He counted all persons coming and going. He walked to the top of the flight of stairs and surveyed the area, determined that there was a reasonable probability that it was overcrowded based on his past experience, and began to count on the second floor. He could see the main bar area and washrooms and dance floor, which was extremely crowded. He said people could hardly move on the dance floor. He could see most of the area to left and to right until a line from the end of the wall. He used a mechanical counter to count.

He testified that he counted the establishment three times. He described his first count as follows:

He counted up the staircase. He believes the occupant load includes areas in the main establishment that are not part of the redlined area. He counted along the left, the bar side, walked toward the washrooms and looked in when the doors opened and counted people there, and then he counted in the main area sectioned off at the dance floor. Then he returned and counted over the barrier. He said there was nothing obstructing his vision. He proceeded toward the other side of the bar and counted the right side of the bar and then turned and walked back along the right and counted all of the people along the dance floor. Then he proceeded on to the dance floor where he stood on a riser that some people dance on. He observed that it was very crowded. He said that people had difficulty moving because there were so many people compressed together. The occupants were unable to move freely and people were effectively stuck in place and that made counting quite easy. He included staff in his count. He included persons in the washroom that he could see from outside. It took an estimated two to three minutes. The outcome was 437 persons, and he recorded that number after using a flashlight to read his mechanical counter. The head of security for the establishment followed him but he did not provide that person with the outcome of the first count immediately.

After taking note of the tally, he zeroed the counter returned to the top of the flight of stairs. He began a second count but did not count people on the stairwell on the second count. On the stairs he estimated that there were 15 or 20 persons.

He described his second count as being the same as the first but for the exclusion of the people on the staircase. He said the purpose of the second count was to ensure the accuracy of the first. The inspector said he zeroed the counter and returned to the top of the stairs to begin. The visibility was the same, the outcome of the second count was 421 persons exclusive of those on the stairs, he recorded the second count at 23:55 hours (read again with a flashlight) and he was too busy working on an accurate count to notice whether the head of security followed him throughout the establishment on that

occasion. He said, "After second count I exited the establishment and made notes. The differences between the counts were the people on the staircase."

The inspector indicated that neither the Licensee nor any of its staff provided him with any person count on that night. He said he departed after two counts at 23:55 hours to make notes and then he left completely at 00:11 hours the next day. He told the head of security that the inspection team would return in 30 minutes to do another count.

He returned at 00:40 hours and did a third count. For the third count, he checked the counter and zeroed it and marked the time and confirmed with Inspector 2. Then he conducted the count with the same methodology but counting persons on the stairs. During that count he noticed that the establishment was less crowded in most areas but the dance floor was the same as previously. He said it took two to three minutes to count, and the count total was 320 persons.

Inspector 1 said he spoke to the Licensee and the head of security and advised that they would be issuing a contravention notice. At that time the Licensee or the head of security denied that they were overcrowded and they said they had 200 persons, but they did not show him any count. He departed 00:52 hours.

Finally, Inspector 1 identified his notes at Exhibit No. 1, tab 9 and said the Branch's concern with overcrowding is that person capacity is the maximum number of persons that should be in the establishment for public safety purposes and for the staff to control the establishment.

Inspector 2

Inspector 2 testified that he received a telephone call from the Victoria Police indicating that a constable believed the Boutique Lounge was overcrowded and asking him to attend. He said he arrived at the establishment at approximately 11:45 pm, observed a crowd of people outside, and entered. He said he observed door persons at work, and that prior to entering he checked the function of his mechanical counter. He said he asked the doorman how many people were in the establishment. The doorman did not have an answer and pointed him to another door person. The inspector said he did not observe a mechanical counter in the hands of the doorman.

The inspector testified that the establishment looked busy, and Inspector 1 began a count. Inspector 2 went to another area to begin his count. He said his line of vision was good as he is taller than many of the patrons. He said he could see clearly as he counted, and he could move through the establishment notwithstanding that it was busy. He knew he could not move through the dance floor because it was very busy there. He said he counted patrons, not persons, and excluded identifiable staff members. He did the count with his mechanical counter. He said that he started at the area (up) behind the dance floor by the bar. He could not safely get onto the dance floor, so he picked an individual in the middle of the dance floor and counted a quadrant. Then he went to the raised area and counted people standing there and around the bar in the booths. He did a circuit of the establishment. He said he was able to move, but not easily. He indicated that as he did not have a drink and was not in costume, people moved for him somewhat but he had to move physically through people with his shoulder or arm as it was quite busy. The inspector said that when he counts, he is as diligent as he can be in terms of "one head per person, one body per person." He said he breaks the people into groups, and can see over many, as he's fairly tall. He subdivided the room into smaller parts. Moving the best he could, he was patient with the crowd, as there was, in his view, the potential for escalation. He did not include staff in his first count. Nor did he include patrons in the washroom or in the

stairwell. He counted 355 patrons. And it took about three or four minutes to do the count. He added that security staff members followed him for portions of the count, but he did not look back to see if they followed the whole way.

He said that the licensee or staff did not provide him with any patron or person count, and he believed the establishment did not know how many people were in the establishment at the time he conducted his first count. With respect to his second count, Inspector 2 said that his observations were that there was not much change. It remained just as busy as it was when he first got there. He conducted his second count in a similar if not identical manner to the first time. He moved slowly and noted that it was busy and difficult to move but he was able to, patiently. He had to resort to the same solution to get above the crowds by the booths and by the DJ and from there, visibility was good. He said he did not count patrons in the washroom or staff on the second count. Nor did he count the staircase on the second count. The outcome was 368 on the mechanical counter. He said that he counted at a good pace, so not too fast. It took about five to seven minutes to do the count. The inspector did not think the Licensee did a count while he was there. No other staff member provided him with a count when he did his second count.

Inspector 2 testified that he recorded both counts shortly after the second one. He moved across the street with Inspector 1, wrote notes and discussed the results of the counts. He said he called the Licensee and his security person across the street and informed them that both inspectors counted persons considerably in excess of the licence capacity. He said the Licensee told him he'd get the numbers down. The inspector said he left at approximately 12:10 am.

Of his return to the establishment later that business night, he said that the inspectors returned about a half hour later at 12:40 am. Then he did another count. He said the inspectors did the "same drill with the counter and checked our watches for time and re-entered." He observed on this count that it was noticeably less crowded. The dance floor density was similar to the area outside the dance floor. The area between the dance floor and service bar was such that he could move freely around the dance floor and it would be accessible if he needed to go there. He said he could see the people on the dance floor easily. He did not include staff or the patrons in washrooms. The lighting was the same as before, sufficient to see facial expressions and navigate through the crowd and read the mechanical counters. He counted one depression per body and head and at a steady pace. Two hundred and ninety was the total number of patrons, not persons. It took approximately five minutes for the third count. He recorded the results of the count immediately after leaving the establishment. Again, he noted that he did not observe any count being conducted by the Licensee.

Licensee

The Licensee testified that he is allowed to have 292 persons in the establishment at one time including staff. He knows and understands that 292 represents both the person capacity and the occupant load. He said he knows the rules and he does not violate them. He said that overfilling the club is not beneficial or worth the headache of potential fights in the club because patrons can't get to the bar or the line up is too long, or the bathroom line for the girls is too long. He said he does not know if increasing the persons increases the financial benefit. There are only three bars with three bartenders. They can only make as many drinks as they can, and putting more people in just means a longer wait for patrons.

The Licensee said that he meets each employee at the beginning of the every night. He meets with the front doorman and describes what is going on that night. He said he makes sure they have radios and mechanical counters and that the counters are working and set to zero. He described the system in place as follows:

There are two clickers, one in and one out. There are four staff members working downstairs. One has the in-counter, and he does ID and clicks people in. Then patrons go to someone at the Treoscope who will pat-down the males and check the purses of females. ID gets swiped into Treoscope to confirm a person's identity and prior issues or if the ID has been used already that night to stop the passing of ID to other individuals to gain entry. The ID checking happens on Broad Street. Stanchions are set up and people are corralled. In the awning area there is a computer mounted to double doors that fold out. ID swipes are done there and photos are taken by Treoscope, which matches the photo to the ID. Next step is that the patrons are allowed into the room. There is a station where the patrons pay cover, if cover is being charged. On regular nights, the cover charge goes to the house. The person gains access to the stairway, and is directed toward the coat check and that is where people enter the room. There is a door person at the top of the stairs. The out-clicker person is at the exit at the front on Broad Street. They click every individual leaving at the exit of the club at Broad Street. They are holding the other end of the roped stanchion. They let people out and click them out at the same time. There is a rope and one patron comes in and one out and someone has to let each person in and out through the rope. There is a third clicker who is the head of security. His mandate is to do a count of the room every half hour and then check to see that his count is consistent with the ins and outs of the room. The Licensee said although he has done some counts, he generally leaves that to the head of security.

The Licensee described the function scheduled for that night as a booking with the University of Victoria (UVIC) Commerce Department. He said they were allowed to sell 250 tickets and they were allowed to keep the door cover charge until midnight. The proceeds of what they were going to sell, they got to keep. They charged \$10. He said that anyone could pay \$10 and gain entry to the club, but as the university did not have "line-up privileges", the staff held a line for patrons without tickets. He said that at the time they were holding a line-up and the room was not at capacity. The commerce department had to decide whether to let some of the people in or leave them outside and continue to wait for their ticket holders to show up. He said the door persons were in place. In total there were eleven door persons working including the head of security. There were four personnel at the front door. If UVIC wanted to admit more than capacity they could not do that. They had no control over volume. The tickets were presented to UVIC door persons and the door person with the clicker would still be counting persons, one in and one door person counting persons going out, with a mechanical counting device.

The Licensee testified that he was bartending on October 31, 2010. He said he worked the UVIC Commerce event. He said there is not enough room for 437 persons in the establishment and it is impossible for the staff to be in error on their count by 145 people. He said he trusts the experience of his head of security and that there is no incentive for his staff to allow in too many patrons.

Head of Security

The witness testified that he was present on October 31, that he has been in the nightclub industry in Victoria for 21 years, and that his staff has considerable experience in the field of security. He said he has been working at the door or security for most of that time in the same location, through several past licensees. He described his activities as follows:

There is a policy for the number of bodies that are allowed in. It is 292 people including staff. His job downstairs is to allow that number in and no more. He said that the staff "run it up to 250 plus staff and then the door is held and ins and outs are held and we use the calibrated counters." The head of security has a separate counter with him all night long and he goes up and down the stairs every 20 to 30 minutes and decides to allow others in, based on the outs and whatever the room count is at that point. When the inspectors came, he had a count of 285 people.

He said on October 31, he and three doormen were responsible for counting patrons. He said the host had the out counter and the centre chain on the street. The doorman with the in counter had the in chain and was checking identification and stamping smokers' hands and deciding if there was capacity to let them re-enter. He said the dance floor can't hold more than 90 people and that with 250-292 people in the club one could do a lap inside within two minutes and would be able to walk freely through the club. He said that if there were 437 people in the room, it would take 15 minutes to half an hour to get through the room, and he has never seen the establishment with that many people in it. He was adamant that the establishment was not over capacity. He said he followed Inspector 1 through the establishment when the inspector was doing his count. The head of security said he counted with the inspector and came up with 287 persons including staff. He also said that when the inspectors came back after midnight and did their third counts, the room was at 220 persons although the inspectors counted 320 or 330.

SUBMISSIONS

The Licensee's counsel submits that a site visit is appropriate. In support of his application, he submits:

- It is always better to see something in three dimensions than in two;
- The room is in fact smaller than it appears in the floor plan at tab 4 of exhibit #1;
- It is inconceivable if not impossible to imagine 437 persons in the licensed premises;
- The premises are quite different from other premises previously viewed by this adjudicator;
- It will become apparent on viewing the room that it is impossible to see 270 degrees from the top of the stairs;
- It is important for the Licensee to know that the adjudicator has seen the room to test the evidence of all of the witnesses, not just the branch witnesses.

He also submitted that site visits are becoming more regular in this forum and he indicated that he recently did one with the Branch advocate present (last week) and he has done a site inspection with this adjudicator as well.

The branch advocate has no objection to a site visit.

I decline to order a site visit. I have no evidence before me that indicates a need for a site visit. The layout of the establishment is straightforward and well delineated by the two floor plans that have been entered as exhibits. The witnesses from whom we have heard to this point have described the methodology of their multiple counts in such a way that credibility can be assessed. Counsel for the Licensee has proven able at expounding his views relating to the credibility of witnesses. I feel that an adjudicator's subjective evaluation of whether an empty room could hold a certain number of persons in a liquor primary environment is likely to be less reliable than evaluating the testimony

of witnesses who have owned, worked in, or inspected the premises. Further, as a creature of statute, an adjudicator is not able to take the equivalent of judicial notice (absence a specified authority for so doing) and accordingly it would be improper for an adjudicator to attend for the purpose of forming an opinion within his or her frame of reference as to whether the room could accommodate a certain number of person. The job of the adjudicator is to hear the evidence of the witnesses put before him and evaluate the testimony of those witnesses in light of the facts of the case. It is for the parties to put any issues of credibility and strength of the witness's judgement to the adjudicator for a determination. An adjudicator must not substitute his own perceptions for those of the witnesses before him.

Circumstances might call for a site inspection in certain cases. In a previous liquor enforcement hearing cited by the Licensee's counsel, this adjudicator attended at the establishment for the purpose of testing relevant and highly contested evidence of available floor-space and whether certain physical obstructions prevented persons from being in a specific location. This was a requirement to a finding of whether a floor space ratio proffered at the hearing took into account the appropriate available space in its calculation.

One of the primary features of an administrative hearing is the efficiency of the resolution of the matter before it. That feature demands that it is not a right of a party to have an on-site visit, but rather that such visits should be undertaken only as required by the facts and when absolutely necessary for the proper determination of the matter. I do not accept that such a visit is required in this instance in order to make appropriate findings.

Branch

The Branch submitted that Inspector 1 counted 437 and 421 representing 50% and 44% more persons than allowed, respectively. Inspector 2 counted 355 and 368, representing 22% and 26% over the total allowed persons, without counting staff members. The inspectors counted 320 persons and 290 (exclusive of staff, or patrons in washrooms or stairway) on their return third count. This is clear evidence that the establishment was well over capacity at all relevant times, even after the Licensee was advised to reduce the number of persons in the establishment between the second and third counts. The Branch says the Licensee knew or should have known the establishment was significantly overcrowded.

The Branch also submits that the Licensee has not shown due diligence, as there is insufficient evidence of written training manuals, or written policies for door control and security, and the absence of such written documents is evidence of lack of due diligence. In addition the Branch argues that the Licensee failed to provide adequate supervision of those empowered to control the entry of patrons through the front door. This says the Branch, is evident by the fact that when Inspector 1 asked how many people were in the establishment, the doorman was unable to say and referred him to the head of security.

The Branch also argues that the Licensee was advised by the inspectors that the number of patrons in the establishment had to be significantly reduced to below the maximum number permitted and despite a 45 minute interval between counts, the Licensee failed to reduce the persons in the establishment to the maximum number allowed.

The Licensee

The Licensee says Inspector 1 could not count effectively in the time frame indicated in his evidence and so no weight should be given that testimony, and that the testimony of the head of security with respect to the number of patrons in the establishment is to be preferred to that of the two inspectors. The Licensee argues that one of the inspectors described his transit of the club in a manner inconsistent with the existing layout, and that it is impossible for the number of persons that the inspectors counted to be physically contained in the establishment.

With respect to penalty, the Licensee says the seven day suspension the Branch is seeking, played out through the usual Thursday through Saturday opening days would result in \$35,000- \$49,000 gross revenue lost and no income to any of the staff for those days. He points out that most of the non-security staff is made up of students and can ill afford to be without the income from their part-time jobs. The Licensee says that the recommended penalty is unreasonable.

REASONS AND DECISION

Two liquor inspectors provided detailed descriptions of their pre-count process, of their counting processes, and of recording and comparing counts. Their evidence was credible and thorough. Inspector 1 counted 437, 421, and 320 persons in three consecutive counts. Inspector 2 counted 355, 368, and 290 persons. Inspector 1 counted all persons. Inspector 2 did not count staff. The Licensee says he has 35 staff. The disparity among the counts of the two inspectors is less than 10%. The inspectors saw no mechanical counters in the hands of the door staff.

The Licensee provided detailed evidence of his nightly staff meetings, and the process and procedure that are supposed to be followed. His evidence in that regard was also credible and thorough.

The head of security provided a comprehensive history of his relationship to the Licensee and to the premise dating back to before the Licensee was in occupation of the space. He clearly has knowledge and familiarity with the relevant issues and with the capacities of the location. He also clearly defined the process and procedures that are mandated by the Licensee for controlling the number of persons in the establishment at all times. I find the head of security to be credible and his method of keeping track of the patrons coming and going, and that the check that he does every 20-30 minutes, is an adequate system.

Notwithstanding the Licensee and the head of security's knowledge and testimony of an adequate system and process for controlling the number of persons in the establishment, they provided far less comprehensive evidence of concrete details surrounding any counts that they may have had and that may have been inconsistent with the inspectors' counts. The head of security said there were 285 people in the establishment when the inspectors arrived, which is at odds with the counts of the two inspectors. He explained the system for arriving at a count, by virtue of receiving information from the doormen stationed at the street level (counting patrons in and out), but provided no details as to how that count may have fluctuated throughout the night in question. The doormen did not testify as to their counts (in and out) or when they shared that data with the head of security. Nobody working for the Licensee shared any counts with the inspectors on October 31.

Unfortunately I am confronted with the choice of two well-presented and generally credible sets of evidence. I must conclude on the balance of probabilities that the detailed description of the actual counts done on three occasions by each of two inspectors must carry more weight than the head of security's single count. I find the inspectors were confident and credible with respect to their time recording and note taking on the night in issue, and I accept that their methods of counting and the time it took to execute those counts were reasonably documented and recalled. Contrary to the submissions of the Licensee, I find the tasks the inspectors describe were likely conducted as they say. I find the inspectors could reasonably count persons in the establishment in the time indicated and I see no significant problem with the timeline that would have any reasonable impact on the counts or the credibility of the process.

I find that on October 31, 2010, the person capacity and the occupant load of the establishment were 292 persons and that there were more than 292 persons in the establishment.

DUE DILIGENCE

The Licensee is entitled to a defence of due diligence if it can establish that it did all that it should reasonably have done to put in place systems and policies and implement those systems and policies in order to ensure compliance with the *Act, Regulation*, and the terms of the license.

The Licensee and the head of security describe in detail, the systems and procedures in place in the establishment to control and monitor the number of persons admitted to the establishment. I find the testimony of both the Licensee and the head of security particularly cogent, detailed, and consistent in that regard. I find that the systems and processes that have been so designed by the Licensee for the control of persons entering the establishment is adequate, notwithstanding the lack of documentary

evidence supporting those claims. Unfortunately, the evidence of significantly more persons in the establishment is a testament to the fact that those systems and procedures were not acted upon or enforced in such a way as to prevent the overcrowding. The facts disclose that this is not a case where an adequate system momentarily broke down without the knowledge of the Licensee. The Licensee was present at the time and was fully aware of the environment in which he was operating, and should have known that the establishment was overcrowded.

Although the Licensee was able to satisfy me that it has designed systems and processes to control the number of patrons in the establishment, the Licensee has not established with adequate supporting evidence that those systems and processes were implemented or followed on October 31, 2010. I find that Licensee was not duly diligent in acting to prevent the contravention from occurring.

PENALTY

Pursuant to section 20(2) of the Act, having found that the licensee has contravened the Act, the Regulation and/or the terms and conditions of the licence, I may do any one or more of the following:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a licence or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a licence

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the Regulation. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The Branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is: whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding this incident. The range of penalties for a first contravention of section 6(4) of the *Regulation* pursuant to Schedule 4, item 15 is a four to seven day licence suspension and/or a monetary penalty of \$5,000.00 - \$7,000.00. The Branch proposes a seven day licence suspension.

The Branch submits the proposed penalty is warranted in order to reinforce the need for compliance with the Act, Regulation, and terms of the licence. The Branch indicates that more than the minimum of the range is appropriate. In the NOEA, the Branch indicates that the recommended penalty is: "in consideration of the previous overcrowding contravention which also occurred on Halloween night one year earlier as well as the hearing less than 5 months prior to this contravention." The Licensee testified that a seven day suspension could represent a revenue loss of \$35,000 - \$49,000. In light of the number of persons in the establishment beyond the maximum person capacity, I find that a longer than minimum suspension is appropriate. I find a five day suspension is reasonable.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of Liquor Primary Licence No. 113949 for a period of five (5) days to commence at the close of business on Thursday, February 16, 2012, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (section 67 of the Regulation). I accept the licensee's submission that the establishment is normally open for business Thursday through Saturday.

To ensure this order is effective, I direct that Liquor Primary Licence No. 113949 be held by the Branch or the Victoria Police Department from the close of business on Thursday, February 16, 2012, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Signs satisfactory to the General Manager showing that the license is suspended will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: January 12, 2012

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager
Liquor Control and Licensing Branch, Victoria Office
Attn: Olubode Fagbamiye, Branch Advocate